IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.12249 of 2016

Date of decision: July 04, 2016

Bachan Singh

……Petitioner

Vs.

UT Chandigarh and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. R.S.Manhas, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. The petitioner prays for quashing the order dated 9.10.2015, Annexure P.4 passed by respondent No.4 – Central Administrative Tribunal (in short, "the Tribunal") vide which claim of the petitioner for revision of pay and pension has been rejected. Further prayer has been made for a direction to the respondents to grant the benefit of military service rendered by the petitioner prior to joining the civil service, for the purpose of pay fixation/annual increment and pension under Rule 4.3 of the Punjab Civil Services Rules, Volume II (in short, "the Rules").

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner was enrolled in the Indian Army as Sepoy on 15.9.1948. The petitioner was discharged from service on

29.4.1956. During the service, the petitioner was awarded Star Itly Medal. After retiring from military service, the petitioner was appointed as Peon in Engineering department in the office of Executive Engineer, CP Division No.4, Chandigarh on 17.2.1959. He rendered 24 years of service with the said department. The petitioner retired on 31.10.1983 from the said department on attaining the age of superannuation. The petitioner approached the respondents for counting of service rendered in military as per Rule 4.3 of the Rules which provides for counting of service rendered during military service for pension. Reliance was placed on judgments of this Court in ***Capt. V.S.Narwal vs. Chief Secretary to Government of Haryana and others***, CWP No.3265 of 1995 decided on 13.11.1995 and ***Capt. Indu Boken vs. State of Haryana and others,*** CWP No.20053 of 2009 decided on 11.10.2012 in support of his claim. The petitioner requested the respondent department for grant of benefit of counting of military service towards seniority, pay fixation/increments and pension but having received no response, he sent a legal notice dated 3.11.2014 to the respondents. Vide order dated 11.12.2014, Annexure A.6, the respondents rejected the claim of the petitioner holding that the benefit of military service could only be granted to those military persons who rendered service during Ist National Emergency from 26.10.1962 to 9.1.1968 and service rendered during 2nd National Emergency from 3.12.1971 to 25.3.1977. Aggrieved by the order, the petitioner approached the Tribunal. The respondent department appeared and filed written statement stating that Rule 4.3 of the Rules only provides for counting of military service at the time of appointment of the person and not at the time of retirement. Further, the claim has been made by the petitioner after more than 30 years. The petitioner filed rejoinder to the written statement controverting the averments made in the written statement. The Tribunal dismissed the application of the petitioner vide order dated 9.10.2015, Annexure P.4 on the ground that the petitioner had not stated the bonus and gratuity received in lieu of pension at the time of discharge from military service so that the amount could be refunded to the Government and further the verification of military service after 60 years was not possible. The petitioner had earlier filed similar petition i.e. CWP No.27000 of 2015. As there were certain mistakes in the writ petition, the same was dismissed as withdrawn vide order dated 26.2.2016, Annexure P.5. Hence the instant writ petition.

3. We have heard learned counsel for the petitioner.

4. Admittedly, the petitioner was enrolled in the Army on 15.9.1948 and was discharged on 29.4.1956. After retirement, the petitioner joined as Peon in the Engineering Department, UT Chandigarh on 17.2.1959 and was retired on 31.10.1983 after attaining the age of superannuation. The claim of the petitioner for counting of military service rendered by him for the purpose of pay fixation/increments as well as pension was rejected by respondent No.3 vide order dated 11.12.2014, Annexure A.6 on the ground that only the service rendered during the first and second national emergency period could be counted for increments and pensionary benefits. Aggrieved thereby, the petitioner approached

the Tribunal. After considering the relevant rule, it has been categorically recorded by the Tribunal that the petitioner had represented for the first time regarding his claim in the year 2014. As per Rule 4.3 of the Rules, the claim of counting military service for service benefit was to be decided by the employer at the time of entry into civil service. The relevant portion of Rule 4.3 of the Rules including Note 6 appended thereto reads thus:-

> "**4.3**(a) Service rendered by an employee belonging to one of the classes mentioned in the Schedule below after attaining the age of 18 years, which is pensionable under military rules, but which terminates before a pension has been earned in respect of it, shall be counted, when followed by service qualifying for pension under civil rules, as part of such service. Service so allowed to count shall, however, be restricted to service, within or outside employee's unit or department, in India or elsewhere, which has been paid from Indian revenues or for which a pensionary continuation has been received by Indian revenues :
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> Provided that any bonus or gratuity received in lieu of pension on, or since, discharge from military service, shall be refunded in such number of monthly instalments, not normally exceeding 36 and beginning from such date, as in each case, the Government may decide. The amount shall be refunded along with interest calculated at the rate applicable on General Provident Fund accumulation from time to time computed in the same manner (i.e. with annual compounding) for the period from the date of receipt of pensionary/gratuity benefits till the date of refund to the Government :
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> Provided further that in cases where after the issue of the orders by the

competent authority on the basis of option exercised by an employee for counting of past service for pensionary purposes, if an individual does not deposit the amount of bonus/gratuity already received by him from military authorities within one month of the receipt of communication from the Government/autonomous body, penal interest at the rate of 10% per annum shall also be charged in addition to normal rate of interest. The condition of payment of interest/penal interest shall also be applicable for military service benefit under the Punjab Government National Emergency (Concession) Rules, 1965.

(b) Service pensionable under military rules which does not terminate before a pension has been earned in respect of it shall not be allowed to count for pension under civil rules."

Note 6 :-

"The sanction regarding the counting of military service should be accorded by the competent authority at the time of appointment of the person concerned and not at the time of his retirement from civil service. Sanctions accorded in such cases are required specially to mention the amount of gratuity bonus recoverable, the number of monthly instalments in which the bonus are gratuity is to be recovered and the date from which the recovery is to commence. If in any case, the gratuity is not to be recovered, the fact will be specially stated in the sanction. The gratuity once refunded in order to secure the benefit of counting former military service for civil pension cannot be paid back in any circumstances."

5. A perusal of Note 6 to the above rule shows that sanction regarding counting of military service should be accorded by the competent authority at the time of appointment of the poerson concerned and not at the time of his retirement

from civil service. In the present case, the petitioner had approached the authorities in the year 2014 only. Further, the petitioner had not stated about the bonus and gratuity received in lieu of pension at the time of discharge from military service so that the said amount could be refunded by him. Moreover, cross verification of the military service records with the civil service records was not possible after 60 years. Even before the Tribunal, the petitioner was not willing to deposit the amount on account of bonus or gratuity received in lieu of pension alongwith interest. Thus, the claim of the petitioner was rightly rejected by the Tribunal vide order dated 9.10.2015, Annexure P.4. The judgments relied upon by the learned counsel for the petitioner being based on individual fact situation involved therein have been rightly held to be distinguishable on facts by the Tribunal. Learned counsel for the petitioner has not been able to show the order of the Tribunal to be illegal or perverse in any manner, warranting interference by this Court in writ jurisdiction under Articles 226/227 of the Constitution of India. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

(Ramendra Jain)
Judge

July 04, 2016
'gs'

Whether speaking/reasoned Yes/No

Whether reportable **Yes**